

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *
Plaintiff, *
-v- 11-CR-264 *
JULIUS DeSIMONE, et al., *
Defendants. *

Transcript of Summation regarding the above-referenced
matter, held before the Honorable David N. Hurd, United
States District Court Judge, at the Alexander Pirnie Federal
Courthouse, 10 Broad Street, Utica, New York, on October 12,
2012.

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1 MR. GLEASON: Thank you, your Honor.
2 Counsel, Your Honor. Members of the jury, three great
3 forces rule the world: stupidity, fear and greed. And
4 that's a quote by Albert Einstein. It was in a very
5 different context to be sure, but nowhere is it more
6 applicable than this case.

7 Greed. The beginning of this trial my
8 co-counsel, Mr. Donner, told you that this was a case
9 about pollution for profit and, indeed, that's what the
10 evidence has shown. The evidence has shown specifically
11 that the defendants in this case and other conspirators
12 stood to make a great deal of money, both saving money by
13 bringing materials upstate and dumping them and by people
14 in upstate getting the fees for the dumping itself and
15 you can see this cost savings and those cost gains were
16 significant, particularly when you consider the tonnage
17 that was being dumped.

18 Likewise, the defendants stood to gain a
19 great deal here. Defendant Nicastro, in particular, for
20 development of -- that he hoped to get from the property
21 once the property was filled in. Last, with respect to
22 the Mazza defendant, specifically, found a cheap way to
23 get rid of contaminated materials that were continually
24 being rejected at Delaware Recycling Products, Inc.,
25 DRPI.

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1 This was a consequence of that greed, an
2 open landfill, unpermitted in Upstate New York.
3 Thousands and thousands of pounds of pulverized
4 construction and demolition debris, much of which was
5 contaminated with asbestos. The pictures speak a
6 thousand words here, folks.

7 Stupidity. The way this crime was
8 committed was ridiculous and it's the greed, the
9 unbridled brazenness the defendant exhibited here which
10 is what got them caught. There's no doubt about that,
11 folks. They ran a landfill with no scales, no fence, no
12 liner, and none of the other features that a normal
13 landfill would have to protect human health and the
14 environment.

15 The defendants here cut corners, broke
16 regulations, violated statutes, all intended to protect
17 the community and they were so brazen about it, that
18 that's what got them caught.

19 The pictures of the landfill speak a
20 thousand words here, folks. Especially when you compare
21 it to a normal landfill. Even Mr. Mazza's solid waste
22 management facility, you saw that there were fences,
23 scales, site controls at that landfill. None of that is
24 present here.

25 Likewise, it was the unbridled greed that

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1 led them to get so desperate for more business that they
2 started soliciting other companies. To that end, after
3 months of dumping they decided, okay, now we'll do a
4 permit but we'll do it via laser printer. We won't
5 actually apply for a permit, we'll just make one
6 ourselves. But they never even got that right, folks.
7 One of the copies says new backstakes, just to show you
8 how illegal this whole enterprise actually was.

9 And fear. Fear. Once the defendants and
10 co-conspirator to this crime knew they were being
11 investigated, they started falsifying disposal reports,
12 lying to law enforcement, concealing documents, all in an
13 effort to cover their tracks, and that was all out of
14 fear, folks.

15 Now, as Mr. Donner told you, my job now is
16 to go through each of the crimes charged against each of
17 the defendants, talk to you about the elements of those
18 crimes and how our proof satisfies those elements. We
19 have the burden of proof here, ladies and gentlemen.
20 It's a burden that we readily accept and a burden which,
21 we submit, we more than exceeded here.

22 Before I get to talking about the evidence
23 specifically, I do need to talk to you about the
24 conspiracy law generally and orient you as to these
25 different charges. Now, at the end, Your Honor here will

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1 provide the jury instructions. If there's anything I say
2 that conflicts with what he says with respect to law,
3 follow what Your Honor says. Okay? But I do need to
4 orient you here a little bit so you have a sense of where
5 we're going.

6 A conspiracy is not an elaborate,
7 complicated concept here, folks, and there's been some
8 confusion that's been infused with this trial. So what a
9 conspiracy is, fundamentally, an agreement. A conspiracy
10 is simply an agreement between one or more
11 co-conspirators and it's an agreement to commit a crime.
12 In this case the conspiracy we have charged has what's
13 called multiple prongs, multiple objects to violate -- a
14 conspiracy to violate specific laws.

15 The judge will provide instructions to you
16 at the end with respect to what the knowledge intent is
17 to each of those prongs. Pay particular attention when
18 he talks about the prongs intended for the Clean Water
19 Act prong of the conspiracy relating to the wetlands.
20 It's a general intent standard. He will explain what
21 that means but suffice it to say that ignorance of the
22 law is no defense. That's something we can all
23 understand. It needs to be an agreement to commit a
24 crime and one or more co-conspirator needs to commit an
25 overt act in furtherance of the conspiracy. One or more

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1 overt acts. We have alleged dozens in the indictment.

2 The overt act doesn't need to be unlawful
3 in its own right, folks. So a good analogy here is a
4 bank robbery conspiracy. Three guys meet, they talk
5 about let's go rob a bank. There's your agreement. Then
6 they decide let's go out to Walmart and buy ski masks.
7 Buying the ski masks in its own right at Walmart, not
8 illegal, but it's an overt act in furtherance of that
9 conspiracy. That's all that's required. Okay? It's all
10 that's required and the overt act doesn't need to be
11 committed by either of the gentlemen in this room, it can
12 be committed by any co-conspirator -- charged, uncharged,
13 indicted, unindicted, dead or alive. There's a person in
14 the conspiracy that committed an overt act. That's
15 enough. You're in for a penny, you're in for a pound.

16 So I'd like to talk now about the evidence
17 specifically. Now, we don't need to prove motive in this
18 case. That's not an element of the conspiracy crime but
19 it's nonetheless instructive here so I am going to go
20 through it.

21 So let's start with defendant Cross
22 Nicastro. His own grand jury testimony will be sprinkled
23 throughout my presentation. His own words here are very
24 telling. First, he said it's tough to farm a site due to
25 the soggy areas. He wanted to get out of the farming

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1 community. He wanted to do something else. His own
2 grand jury testimony spells that out. Question. You had
3 said it was somewhat difficult to farm that particular
4 property. Isn't that right? His answer, yes. You said
5 it's soggy, that was in your -- during certain times of
6 the year; is that correct? Yes. Soggy areas, folks, and
7 the another way to say that is wetlands or jurisdictional
8 waters. I wanted to make it more usable for development
9 and his own cousin, Chris Nicastro, said that he wanted
10 the site developed and filled to build a restaurant or
11 some other commercial enterprise. That's what he wanted
12 to do with the property. He was done farming. Wasn't
13 making enough money. It was too difficult. He wanted to
14 do something else.

15 Motive for Mazza defendants. Well, it's
16 financial, folks. That's the first reason. You heard
17 Patrick Stamato testify, an individual with a lot of
18 years in the solid waste business, said it usually costs
19 about a hundred dollars a ton in downstate and New
20 Jersey. The deal Mr. Mazza struck, Mr. Decker to dump
21 with this property was \$52 a ton. It's cutting his cost
22 in half, folks. Even if the materials were
23 uncontaminated. But then that leads us to the other
24 motive. He had a history of rejections at Delaware
25 Recycling Products, leading right up to the opening of

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1 the Frankfort site.

2 Fulton Williams testified to that effect
3 and if you look at government's -- Government Exhibit
4 34-D, which I urge you to do in the jury room, given how
5 hard it's to read on screen, I would certainly urge you
6 to look at the pattern. I'll talk about that. I'll talk
7 about that more in a moment but that was one of the
8 motives. He was having trouble getting rid of the
9 materials. Even admitted that on the stand. He was
10 having trouble getting rid of these materials.

11 Counsel for Mr. Mazza said at one point
12 during the trial, during cross-examination, the site was
13 open for abuse. Exactly. This site was open for abuse.
14 Dominick Mazza was having trouble getting rid of
15 materials in the summer of 2006. The opportunity came
16 along, he saw a site open for abuse, he could get rid of
17 it cheap, you could get rid of it easy and that's what he
18 did.

19 Other conspirators to this crime are
20 listed on the screen. I'm not going to go through all
21 those motives, but those are other conspirators, folks,
22 and those are their motives. So let's get to the first
23 element here. What exactly was the agreement? You heard
24 a lot of cross-examination to the effect of, well, maybe
25 he didn't agree with that or this aspect of the

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1 conspiracy. Maybe he didn't enter into an agreement with
2 respect to this or that. Fundamentally, folks, the
3 overall agreement was to make and save money by illegally
4 dumping at the Frankfort site. That's uniform to
5 everybody, including the two individuals in this room,
6 including the unindicted co-conspirators, even including
7 the other individuals listed on the previous screen.
8 Every one of them wanted to make or save money by
9 illegally dumping at the Frankfort site. It's just that
10 simple. They may have achieved those objectives through
11 different means, they may have gone about it differently
12 but that was the overall objective.

13 So, with respect to the conspiracy, let's
14 talk about who agreed with who. There's been a lot of
15 testimony about, well, maybe he didn't agree with this
16 person, that person, maybe he didn't know this person or
17 that person. Let's start with Cross Nicastro and, again,
18 his own grand jury testimony, his own mouth talks about
19 the fact that before the dumping got started several
20 individuals came up to visit the property and he
21 quibbled, no. No, that's not true. Nicholas Marangi
22 never visited that property. Yes, he did. But he said
23 several. Don Torriero visited that property as well.
24 Yes. Butch Luther visited that property. Yes. So that
25 would be several individuals visited the property then.

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1 Correct? Okay.

2 When Mr. Marangi visited the property you
3 discussed where the filling was to occur. Didn't you?
4 The extent of the filling on the property. Yes. But
5 regardless, at some point in the spring of 2006 you and
6 an individual by the name of George Luther did discuss
7 filling that property; is that right? His answer, right.
8 At some point you met with Mr. Luther and two gentlemen
9 by the name of Mr. Nicholas Marangi and Mr. Julius
10 DeSimone, correct? Correct. And you discussed filling
11 that property. Yes. Regardless, Mr. Marangi was the
12 person who was going to provide the filling material to
13 fill that property. Yes. Mr. Luther was going to run
14 the excavation and filling operations onsite; is that
15 right? Yes. In other words, George Luther was going to
16 run the bulldozer onsite to move the filling material
17 around. Correct? Yes. And Mr. DeSimone would run the
18 finances and operations onsite; is that right? Think
19 George Luther ran the finances.

20 How can he say to you, members of the
21 jury, that he wasn't involved in the agreement that led
22 to this filling? How can they say that to you? Listen
23 to his own testimony. He was involved in the extent --
24 deciding the extent of the filling, how it was going to
25 be filled, the financial agreements. He was in this up

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1 to his neck and then they took it a step further and they
2 executed a general agreement for the filling of that
3 property. That property which, as you can see here,
4 members of the jury, they discussed the extent of the
5 filling, it's set forth in the orange outline here.
6 That's the extent of the filling.

7 Julius DeSimone, George Luther, all these
8 people -- Special Agent Derx, Investigator Clarke all
9 talked about the extent of the filling. That's what the
10 orange line is. That's the area that they wanted filled.
11 So they executed an agreement to that effect. Two
12 sections are of particular note here. Three dollars a
13 ton for the dumping. Nicholas Marangi was going to pay
14 them \$3 a ton to dump there.

15 Section 5. This is important, folks.
16 It's a five-year exclusive contract. They were going to
17 dump there for five years and I believe there's an
18 extension in the contract for another three but let's
19 stick with five years for now. That's what they did in
20 just two or three months. And look who signed the
21 agreement. Cross Nicastro, Butch Luther, Nicholas
22 Marangi.

23 We don't need to prove -- reduce a
24 conspiracy to a writing here, folks. But here that's
25 what they did. Now, the other point that I think needs

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1 to be made here early on about what exactly the agreement
2 was, what it was they were agreeing to do here, if you
3 find it doesn't need to be -- you don't need to find
4 absolutely every single prong of the conspiracy or that
5 every aspect listed on the screen is illegal. You need
6 to find one of them. If the Frankfort site was projected
7 to fill wetland or waters, if it was within a hundred
8 feet of those waters, if it was within 50 feet of South
9 Side Road, if it was accepting unrecognizable pulverized
10 materials and contaminated materials or generating fees
11 or other consideration, making money off of dumping, it
12 was an illegal landfill and that agreement was a reduced
13 writing, reducing the agreement.

14 If so -- moving on. So the -- the -- it's
15 pretty clear from that that Cross Nicastro had an
16 agreement with all the individuals listed on that screen,
17 Nicholas Marangi, Don Torriero, Eagle Recycling, which is
18 Nick Marangi's and Don Torriero's company, George Luther,
19 Tannery Road, L.L.C., which is a company that George
20 Luther established. Jon Deck. I've got an asterisk
21 there, folks.

22 Several of the defendants have argued
23 throughout this trial they didn't know or meet certain
24 individuals. We don't need to prove that they all knew
25 each other. Jon Deck was arranging for the transport of

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1 the materials to this site. Nicholas -- pardon me.

2 Cross Nicastro and Dominick Mazza didn't need to know him
3 necessarily to prove there was a conspiracy, and let me
4 give you an example.

5 A drug conspiracy. The people cutting the
6 cocaine and shipping it from Colombia to Florida don't
7 know the street-level dealers in Washington, D.C., or
8 Philadelphia but it's a drug distribution conspiracy
9 nonetheless. They were all aware of the crime, they are
10 all aware of the illegality of it.

11 Cross Nicastro's property was this -- was
12 the object of all the shipments that Jon Deck arranged.
13 And now let's talk about the -- who it was that the Mazza
14 defendants entered into an agreement with and let's start
15 with the very document upon which Dominick Mazza
16 allegedly relied in sending up these 21 loads of
17 contaminated material up to the Frankfort site. Let's
18 start there.

19 Look at all the names that are listed on
20 his copy of that permit. Jon Deck, Don Torriero,
21 Nicholas Marangi, Tannery Road, L.L.C., and then Cross
22 Nicastro's address. He was certainly aware of all of
23 these players. They were all listed on the very document
24 he says that he read. It's right there, folks.

25 And this is a point where I'm going to

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1 pause and talk to you a little bit about Dominick Mazza's
2 testimony yesterday. He took the stand and he told you
3 he read this over quickly, and based on this and a quick
4 conversation with Jon Deck, he sent the shipments from
5 his facilities up to Frankfort, New York.

6 You need to ask yourself whether that was
7 credible testimony. He's been with the solid waste
8 business which is heavily regulated, fairly rough
9 business for 20 or 30 years. Decades I think is what he
10 said. A guy he's never dealt with before shows up,
11 doesn't know Jon Deck from Adam, shows up, hands him this
12 piece of paper and says, go ahead, let's start shipping
13 stuff up. He doesn't inquire with any of the other
14 people on this page, he gives it a quick speed-read. He
15 starts shipping stuff up.

16 Is that really credible, members of the
17 jury? He's got a whole family of people depending on
18 him, on this business, generating money which was one of
19 his priorities, and he just says, I'm going to send up
20 solid waste to someplace I've never seen based on one
21 five-minute conversation with Jon Deck. Is that really
22 credible explanation? Or is it more likely that he was
23 having trouble getting materials disposed of, he was
24 getting things rejected in Delaware, he saw an
25 opportunity and he took full advantage of it. Is that

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1 more likely, folks?

2 Nonetheless, you can see he was aware of
3 all these other players. He certainly talked to Jon Deck
4 about the shipments. Nicholas Marangi. All these other
5 people were listed there and he was sending the materials
6 to Cross Nicastro's property.

7 Likewise, folks, follow the money here.
8 If you don't believe the contracts I've just shown you,
9 if you don't believe the permit letter, the fraud letter,
10 follow the money here and, again, let's start with Cross
11 Nicastro's own grand jury testimony. It says that
12 Mr. DeSimone and Mr. Luther all got paid a fee for the
13 dumping that occurred at the farm for the site; is that
14 right? His answer, yes. There's a contract for the
15 filling of that site, isn't that right? Yes, there is.
16 I won't go through all this. I'm not going to read all
17 that to you but, regardless, he talks about the fact
18 there is an even money split here.

19 Money was gone. One dollar Butch Luther,
20 one to DeSimone, one to Nicastro, there's a monetary
21 relationship, there's a flow of money happening here.
22 Likewise, look at the other money trails that are
23 involved in this case. You've got Eagle, which is
24 Nicholas Marangi's company sending money to Jon Deck.
25 You've got Tannery Road, which is Butch Luther's company

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1 sending money to Cross Nicastro, and we have got
2 government exhibits that speaks to all this. Look at all
3 these money trails, folks. You've got Mazza paying Deck
4 and then Deck turning around and paying Tannery Road.
5 The money trails say a lot here, folks.

6 Now, I'm going to stop here and talk about
7 the members of this conspiracy. As I alluded to already,
8 it's not just the two men and their companies here that
9 are conspirators. Julius DeSimone and Butch Luther were
10 conspirators, that's why we put them on the stand.
11 Candidly, I think you saw what they testified to. Julius
12 DeSimone, in particular. It's a man who's pled guilty
13 to, among other things, making false statements.

14 Folks, you shouldn't believe a word that
15 man says -- not a word -- unless, of course, it's
16 corroborated by other evidence in this case and it is. A
17 lot of what he said is corroborated by other evidence.
18 It's rare to find people who are in the throes of the
19 conspiracy without clean hands. It's just not going to
20 happen. We wanted to show you folks who was involved in
21 this conspiracy. That's why we put them on the stand.

22 So let's talk about the conspiracy prongs
23 of the conspiracy. The first one, Clean Water Act, to
24 fill waters of the United States. As I mentioned, we had
25 multiple individuals talk about the extent of the filling

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1 and that's the orange lines on that diagram. Likewise,
2 you have Army Corps wetland, Joshua Frost, who went out
3 to the site, did research, and in his expert opinion
4 found three wetlands in the fill area. Along with
5 multiple streams going right into the Mohawk River.
6 Federal waters, in his estimation.

7 And then you had the Mazza defendants put
8 up another expert who corroborated those findings. Is
9 there any conclusion that he came to yesterday that
10 refuted what Josh Frost said? The answer is no. Now,
11 both those people said we don't -- both those -- Josh
12 Frost said he doesn't know whether the actually existing
13 fill pad -- whether that actually got into wetland or
14 not. He couldn't -- he couldn't dig around the bottom of
15 the pile. Likewise, the defendants' expert didn't dig
16 around at the bottom of the pile to find hydro soils but,
17 again, the conspiracy doesn't need to succeed, rather, it
18 needs to be an agreement to do an act the law forbids and
19 in this case, folks, the act is clear. Even the
20 defendants' own expert, when I asked him the question if
21 they got into wetland, if they continue to fill west and
22 they got into that wetland, would that be a crime, he
23 said yes, it absolutely is.

24 That's all we need to show and, again,
25 this is a blow-up for your edification. And the other

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1 thing that's important to note here is, I've said,
2 there's a five-year contract. That's what they filled in
3 three months. Four hundred truckloads in three months by
4 the conspirators, 21 of which came from Mazda & Sons, 403
5 months. How many truckloads are going to go up there in
6 60 months and the conspiracy was accelerating.

7 Asbestos wasn't going to go straight up.
8 We weren't going to have a fill pad that was the height
9 of a skyscraper, folks. They had nowhere to go. Cross
10 Nicastro's boundary ends at the eastern end of his
11 property. Only places to go were west and north. They
12 were going to get into those wetlands. There's no doubt
13 about that. And there's the particular section again of
14 the agreement that talks about being a five-year
15 exclusive.

16 And, again, let's go back to the defendant
17 Nicastro's own grand jury testimony. I'll draw your
18 attention to the bottom. Question 14, when Mr. Marangi
19 visited the property, you discussed where the fill was to
20 occur, didn't you? The extent of the filling on the
21 property. His answer was yes. Defendant Cross Nicastro
22 knew exactly where the fill was going to go over the next
23 five years, that's what he wanted, that was the whole
24 point, was to get this property and these soggy areas
25 filled so he could build something.

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1 Again, the other thing we need to show, it
2 was done without a permit or they didn't have an
3 intention to have a permit. Well, look at the purported
4 permit they put in front of you. The dumping began in
5 June 2006, the date on that agreement June or July, I
6 should say, the date on the agreement was September.
7 They have been dumping for months before that even
8 occurred to them, well, maybe we should get at least
9 something that looks like a permit and, again, go to the
10 grand jury testimony, folks. You've been filling this
11 for 20 years. His answer, probably. Anything from New
12 York state? No. Anything from the federal government?
13 No. EPA? No. Army Corps? No. There was no permit for
14 the filling. There wasn't going to be a permit for the
15 filling.

16 Folks, the only reason they didn't get any
17 of these wetlands is because this is one of those
18 fortunate circumstances where law enforcement caught them
19 before they caused the damage. Before they -- well,
20 before they caused damage to those wetlands depicted on
21 that diagram. They certainly caused quite a bit of
22 damage with what they did.

23 The next part, the part 360 Regulations,
24 which are state regulations. Specific, can't be, one, a
25 hundred feet of a wetland or water, water can't be within

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1 50 feet of a public right of way. Folks, what does the
2 picture show you? It's right on South Side Road. You
3 can see the floodplain to the west, right beyond the hay
4 bales where it starts. You've got the Mohawk River right
5 there.

6 Likewise, there have to be engineering
7 studies, groundwater controls, liners, all those types of
8 things and, again, defendant Nicastro admits none of that
9 was present on the site, not a one of them. No liner, no
10 groundwater monitoring, no sampling.

11 So let's go to the knowledge aspect here.
12 Were the defendants' actually aware of the part 360
13 Regulations? Go back to Mazza defendants' copy of their
14 letter. The letter on which they allegedly relied for
15 what they claim was legal dumping or what they thought
16 was legal dumping. But the letter they got goes right --
17 right there it says what they were doing was illegal in
18 its own right because, again, it wasn't a real good crime
19 they committed. It wasn't a real smart plan they had, it
20 was the best they could do. So, for instance, the copy
21 of the letter he was providing specifically says it has
22 to be recognizable, uncontaminated materials to include
23 concrete, concrete products and the like. It also says
24 it can't be hazardous waste.

25 Well, folks, look at the pictures again.

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1 There's household waste, there's lightbulbs, there's
2 shingles, there's transite siding. None of which falls
3 within that exemption. You've also got -- in this
4 picture you've got the lightbulbs and you've got
5 hazardous materials in there and I'll get to that in more
6 detail in a minute but I want to pause here and say,
7 yesterday Dominick Mazza again takes the stand and said,
8 those types of materials couldn't have come from my
9 facility, I had that great star screen system.

10 Well, he's also admitted he had a grinder
11 on site. But he nonetheless stuck right with his story.
12 That material couldn't have come from my site. My site
13 was only generating something that looked like sand. Why
14 is it, then, that New Jersey Department of Environmental
15 Protection Inspector Brandi McPeak came in and testified
16 that's exactly what she saw at the Mazza facility, that
17 they were generating. Why is that, folks? She didn't
18 have a dog in this fight. Rather, the only person that
19 said this material was clean, wonderful, that the star
20 screen system generated this material was Dominick Mazza.

21 Dominick Mazza stands the most to lose in
22 this case. Again, the samples came up high for asbestos,
23 folks. Again, his own letter, if you don't -- if you
24 don't buy that, folks, fine. The letter specifically
25 says you can't be exchanging money for dumping. That's

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1 pretty much uncontested. They were exchanging money for
2 the dumping and, likewise, don't forget with respect to
3 Mr. Nicastro. Mr. Nicastro admitted to special agents
4 that when the first loads started coming in, he saw that
5 wasn't clean fill and, folks, he was there every day. He
6 saw this stuff coming in every day. I'll get to this in
7 much more detail.

8 Another prong of the conspiracy is what we
9 call Superfund law. It's -- the acronym is CERCLA and
10 it's -- it specifies that if you release one pound or
11 more of a hazardous substance within a 24-hour period,
12 not going to get into that in great detail, suffice to
13 say that's exhibit -- Government Exhibit 1 is more or
14 less dispositive on this point.

15 There's also a prong of the conspiracy
16 known as client conspiracy but it's fraud, a conspiracy
17 to defraud the United States from enforcing its own laws
18 and here what you need to look to is the conspirators
19 provide copies of the fraud letter to investigators.
20 When the investigators started getting wind of this site,
21 some of the conspirators starting giving copies of this
22 letter saying the site is legal. This site was legal.
23 Likewise, conspirators set up certain business entries to
24 conceal the fact that consideration was being paid, like
25 Tannery Road.

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1 And last, but not least, this brings you
2 to a fairly big point. The Frankfort site was omitted on
3 monthly solid waste disposal reports, submitted to New
4 Jersey Department of Environmental Protection by Dominick
5 Mazza and his company, thought the site was so legal.
6 Folks, if they thought it was perfectly on the up and up,
7 if they relied on Jon Deck, why isn't it on all the
8 documents that get reported to the environmental agency?
9 Why is that, folks? The site is on the up and up, why
10 not just report it? That's not what he did.

11 You look at the solid waste disposal
12 report for October 2006 that was submitted to New Jersey
13 DEP by the Mazza defendants. You can look there, compare
14 it to what he was getting rejected in Delaware, he was
15 having asbestos rejections in Delaware. Yet -- no. No
16 asbestos problems. Look at the right-hand column.
17 There's nothing there. Folks, go through Government
18 Exhibit 45-E. Go through the whole thing. You won't see
19 45-E, the mention of Frankfort or Tannery Road in all
20 those pages. Nowhere. Yet, all those pages to report it
21 and he didn't. However, this is the interesting point.
22 They call the witness yesterday from Monmouth County, not
23 environmental enforcement agency, a planning agency.
24 Planning agency that uses the same form, they asked for a
25 copy of the same form. Why was that different, folks?

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1 Why? Still didn't mention asbestos. Didn't talk about
2 that. But, Tannery Road somehow miraculously appears on
3 this document.

4 Folks, this is the revised document. They
5 revised it. That individual couldn't say definitely when
6 the Monmouth County report was filed. Folks, it was
7 filed after Dominick Mazza knew he was under
8 investigation. He's messing around with the paperwork.
9 There's no doubt about that, folks. Likewise, this isn't
10 an isolated occurrence. This isn't a mistake. Take some
11 of the documents he's got internally. Dominick Mazza was
12 on the stand yesterday, he talked about scale receipts,
13 something they generate for billing purposes.

14 Okay. So let's look at one of those
15 loads, says -- Mazza talks about the facility I.D.,
16 tonnage, date, all that stuff and it lists Tannery Road,
17 L.L.C. That's something he's going to use internally for
18 billing purposes. Now, let's look at what's going to the
19 State of New Jersey for the same exact shipment. Same
20 tonnages, same date, same facility, but now we have got
21 it going to Pennsylvania. Why is that, folks? Another
22 coincidence. Likewise, there are other prongs of the
23 indictment that -- that involve other conspirators. We
24 won't necessarily get into that because it's not really
25 something you need to consider given the defendants that

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1 remain in this case.

2 Last, I mention to you overt acts. You
3 need to have one overt act committed by any of the
4 co-conspirators. Doesn't need to be one of the
5 conspirators in this room and we have listed dozens.
6 There are payments, there are transmissions of that fraud
7 letter, there are shipments, there's the dumping, there's
8 the acts of concealment after the fact. All of those are
9 overt acts in furtherance of this conspiracy.

10 Again, the conspiracy didn't need to
11 succeed. They didn't need to get into the wetlands for
12 us to make our burden on count one. So that's the --
13 that is count one. That's the facts and that's the
14 evidence that supports count one. So I want you to see
15 the consequences of this conspiracy. I'm sure you're
16 aware of it already but I think it's worth looking at.
17 You've got an illegal wetland fill in Upstate New York, a
18 fill pad that's approximately 30 feet thick of
19 contaminated construction and demolition debris wide open
20 to the public. There was testimony that there were bike
21 tracks going back and forth across this property. You've
22 got piles of contaminated material that had to be kept
23 and dealt with as a Superfund site. You've got this type
24 of material scattered all throughout the site. That's
25 the consequences, folks.

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1 So that moves me on to count two. The
2 actual Superfund count, the substantive Superfund count.
3 Here's the elements we need to prove. There needs to be
4 a release, a friable asbestos and a reportable quantity,
5 which in this case is one pound, and you have to know of
6 its release and fail to report it. Those are the
7 elements, folks. So let's go through them. Regarding
8 the release, Owen Loffredo from Serveco testified that he
9 sent two trucks to pick up loads 1106 and 1109 at the
10 Mazza facility and he preloaded those loads. So they
11 were loaded on the 10th and he dispatched them up to the
12 Frankfort site on the 11th. So, no doubt about that.

13 It also bears mentioning these are the
14 manifests, okay? 1106 and 1109. Folks, you heard that
15 over and over through this trial. It's obviously an
16 important point. Don't forget, Dominick Mazza during his
17 interview with federal agents, admitted to Special Agent
18 Derx that he arranged to have those two loads dumped at
19 Frankfort on the 11th. He admitted that. And you have
20 two law enforcement eyewitnesses, folks. Two law
21 enforcement eyewitnesses.

22 You have Corey Schoonover and you have
23 Investigator David Clarke. Two individuals that got
24 there during the early morning hours on October 11th and
25 saw three trucks, one of which was actively dumping that

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1 belonged to Eagle Recycling. There's no doubt about
2 that. They also saw two other trucks onsite right near
3 piles three, four and five. Those two trucks attempted
4 to leave. They were sent right back into the facility
5 and they were directed to stand by the piles that they
6 just dumped. Those individuals were photographed and the
7 documents were seized from them, the documents 1106 and
8 1109.

9 Okay? Now, I know that the defendants
10 made a lot -- they tried to make a lot of hay out of the
11 fact that Owen Loffredo, when he found out trucks have
12 been stopped, that he sent them back to the Mazza
13 facility and told them to dump it on their floor. He
14 didn't actually see that, that's what he directed his
15 drivers to do. He didn't see it. The two people that
16 did see it were, again, Corey Schoonover and David
17 Clarke. David Clarke testified that when those trucks
18 left the site, they were empty.

19 Those trucks dumped those loads, folks.
20 This is direct evidence. There is no doubt about that.
21 And there's cross-examination that the defendants have
22 gone into over and over and over again. Maybe it's not
23 our pile, we don't think it was our piles, we dispute the
24 fact it's our piles. Folks, they are, in essence -- what
25 they in essence want you to believe is that -- I'll give

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1 you a metaphore or an analogy.

2 Two officers are dispatched because they
3 hear -- because gunshots are heard in an apartment. They
4 go to the complex, they storm in through the door, they
5 see a man with a machine gun standing, smoking machine
6 gun standing over a woman that's been shot to pieces.
7 These defendants would have you believe that's not
8 sufficient evidence. That's not good enough because the
9 officers didn't actually see the assailant pump the lead
10 into this woman. That's what they want you to believe
11 here.

12 It's nonsense, folks. Don't fall for
13 that. You've got two law enforcement officers, law
14 enforcement officers took the stand and say under oath
15 those two trucks dumped those three piles or those two
16 piles that tested positive and those are the piles
17 specifically. I wanted to show you that.

18 Now, regarding friable asbestos -- this is
19 an important point. Special Agent Justus Derx testified
20 that he saw friable asbestos scattered throughout the
21 piles dumped by Mazza and Son, Inc. He sampled that
22 material, he took photographs of that material. He said
23 it wasn't isolated, it was sampling, that was
24 representative of material that was scattered throughout
25 these -- these loads dumped by the Mazza defendants.

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1 Piles three, four and five correspond to samples 14, 15
2 and 16.

3 Likewise, he went into such detail that he
4 photographed the samples in the bag and after they were
5 in the bag, because he didn't want to expose himself,
6 after they were in the bag he was able to reduce those
7 samples to powders by hand pressure. He testified to
8 that. There's the other sample, and then those samples
9 were sent off for analysis and came up positive for
10 regulated amounts of asbestos, folks. That's
11 uncontested, those findings.

12 Likewise, we need to show there was one
13 pound. Well, the total weight in the trucks was about
14 88,000 pounds, folks. Special Agent Derx testified that
15 the material that -- that he sampled was commingled
16 throughout those piles and he said it was consistent with
17 the residential structure and he thought it was those
18 same residential structure because he saw pink paint on
19 the transite. How many houses have pink paint? He
20 testified further that in his expert opinion, an expert,
21 might I add, probably the foremost national expert on
22 asbestos-related crimes, testified that there was
23 probably 450 pounds of pure asbestos in such a small
24 house. We need to prove one pound.

25 Last element is that the National Response

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1 Center wasn't notified. This is an easy one. National
2 Response Center checked for their records and they didn't
3 find a thing. To this day, folks, nobody has reported
4 the release of hazardous substances on this site. Not
5 defendant Nicastro, not defendant Mazza, not Mazza &
6 Sons, Inc.

7 Likewise, the knowledge here. Again,
8 you've got to go right back to Delaware Recycling
9 Products. This is why this is important, folks.
10 Delaware Recycling Products has been rejecting things
11 throughout the whole summer, the same types of materials,
12 from Mazza and Sons, Inc., from August to September 2006.
13 There is the history of the rejections. Dominick Mazza
14 testified that he was aware of the problems, he had a
15 conversation with Fulton Williams, one of the individuals
16 who worked at DRPI. He was well aware that they were
17 having this problem. He was well aware of the rejections
18 and these are the -- these are the actual rejection
19 notices that go along with the summary.

20 Again, look at the dates, look at the
21 party. It's all going back to Mazza & Sons and the
22 conversation was, in essence, you are costing me money.
23 Dominick Mazza wasn't happy about this. Well -- and you
24 heard what Dominick Mazza's attitude is here -- he said
25 it on the stand yesterday. His attitude about this is,

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1 he makes more money the more trucks that are coming
2 through his facility, and his workers are turning the
3 trucks around quickly so they can keep generating revenue
4 and he said something to the effect of I tried to follow
5 the law where practicable, when it's possible, to the
6 extent I can. But not if it's going to get in the way of
7 generating revenue; he made that poignantly clear. He
8 didn't take the stand, I'm sorry this happened, I'm
9 totally aware of it. If I had known something about it,
10 I would have done something about it. That's not what he
11 testified to. That's not what he did.

12 Likewise, he knew he was having a problem
13 in his facility. He said that yesterday. They have
14 barrels around with asbestos here, things like that. So
15 that's a -- that's the Superfund count.

16 With respect to the false statement,
17 that's another charge against Dominick Mazza and his
18 company. What we need to prove that he made a knowingly
19 false statement that was material to the matter within
20 federal jurisdiction, in this case, EPA. That's what we
21 need to prove. Dominick Mazza stated -- let's go through
22 this. He came up to Syracuse in 2008 and he said, among
23 other things, initially, I didn't have any rejections
24 whatsoever. He was asked that question. Did you have
25 any rejections anywhere else? No. No. Then he was

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1 confronted with the paperwork, and might I -- and let me
2 back up for a moment.

3 During that interview he was warned at
4 length don't lie, don't guess, don't answer if you don't
5 know. If you want to talk to your attorney, do so. If
6 you violate those rules, it's a felony. He was warned at
7 length. He was represented by counsel but, nonetheless,
8 he lied. He said no, I had no rejections. Then he was
9 confronted with the paperwork, the law enforcement agents
10 said he got upset, he got irate. He admitted that he got
11 irate. He said I believe that Mr. Benedict got him
12 irate, got him all flustered.

13 Well, members of the jury, he also lied to
14 you because he said that he -- he told them about these
15 rejections before he saw the paperwork. That's just
16 simply not true, folks. He lied to you about that. But,
17 nonetheless, let's think about what he says if he gets
18 upset, and his reaction is, I'm going to start lying. He
19 didn't get upset and leave the room. He didn't get
20 upset, say you people are acting like idiots. He didn't
21 do that. His reaction apparently is when he's under
22 pressure, he lied. That's what he did.

23 So we go through that episode, get caught
24 once, you can see and then he's asked again, we have gone
25 through this exercise once. Do you have any stuff

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1 rejected after October? Again, no. And he gets caught
2 again. Documents get put in his face. So those are the
3 documents and this time there are sample analyses that
4 corresponded to it. Now he claims he wasn't aware of
5 these sample analyses but he certainly told you on the
6 stand he was aware of the rejections and aware that there
7 was an asbestos problem.

8 Folks, again, this -- he put it up here
9 just as a reference but Government Exhibit 34-D. Look
10 through it. An interesting pattern develops here. We
11 have rejections going to Delaware Recyclable Products all
12 through August and then August 31 rejection stopped. But
13 lo and behold, they pick up again on October 12th. Why
14 is that date so relevant? It's the day after the
15 Frankfort site got shut down. He wasn't getting things
16 rejected in Delaware anymore because he had a new outlet
17 for the unacceptable waste he was generating. And then
18 when that new outlet at the Frankfort site went away,
19 contaminated materials start going to Delaware.

20 Again, here's a point that a colleague of
21 mine in Chattanooga makes from time to time. Dominick
22 Mazza quibbled with me when I said you were prepped about
23 this meeting by your attorney. How much prepping do you
24 really need to tell the truth, folks? How much coaching
25 do you need to tell the truth? He was asked a simple

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1 question. Tell the truth to federal agents. You don't
2 need a lot of prepping to do that. So that brings us to
3 obstruction of justice and this one is Dominick Mazza's
4 company. What we need to prove is that he provided an
5 altered document to a federal agency to influence an
6 investigation. Here's what we don't need to prove, which
7 I anticipate the defendant will argue. He actually
8 impeded the investigation or that it was a good plan to
9 impede or impair the investigation. That it was likely
10 to succeed. We don't need to prove that. We absolutely
11 had documents 1106 and 1109. We got them from Julius
12 DeSimone.

13 It's not really the point, folks. The
14 point is, he secreted the documents in an effort to
15 shield himself from criminal liability. Let's go to the
16 grand jury subpoena. Likewise -- before I get to that,
17 before I get to that part of it, another point of
18 Dominick Mazza's testimony yesterday which was, frankly,
19 just incredible, was -- he runs a small family company,
20 only a few family members that work there and he's got
21 other people but he said it's got two shareholders, it's
22 a small company.

23 Who handles the documents? Who actually
24 deals with these documents? I don't know. You don't
25 know? Maybe the ladies in the scale house, maybe --

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1 maybe they have it. I'm not sure. He's very evasive
2 about that. He's still trying to distance himself from
3 these documents, folks. He was issued a grand jury
4 subpoena. Well -- let me back up for a second because
5 this count is against Mazza & Sons, Inc. You have to
6 think about how do you establish knowledge on behalf of a
7 corporation? It's a difficult question. There's two
8 ways to do it. An agent, like Dominick Mazza, can speak.
9 He can have the knowledge of the corporation.
10 Corporation is the sum total of its employee.

11 You can have, as the judge will instruct
12 you, collective corporate knowledge. One individual can
13 know something, another individual can know that, but the
14 sum total of the employees' knowledge has to be applied
15 to the corporation. That's important here. Even if
16 Dominick Mazza is saying I didn't know where the
17 documents were, his company did. So he's issued a grand
18 jury subpoena.

19 Folks, by that -- by way of background, a
20 grand jury subpoena is not a voluntary compliance
21 document. It's not a request. It's an enforceable order
22 to provide documents. Here's what we asked for. In
23 particular, look at the bottom circle there. It's asking
24 for, among other things, all manifests, contacts,
25 shipping information or any other document involving or

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1 regarding any disposal at an open dump, sanitary landfill
2 or solid waste management facility in New York state.
3 That's what we asked for. What we got was thousands of
4 waste origin manifests. A lot of them not even going to
5 anyone in New York. They papered us. They buried us
6 with these things. But the interesting thing to note
7 here is now he's saying, well, I'm not really sure we had
8 a whole lot of waste management in manifests. The grand
9 jury response is chocked full of them. They -- they were
10 maintaining these documents in the normal course of their
11 business. This was routine procedure for them to do so
12 and it bears mentioning here, folks, some of those waste
13 origin manifests will be in the original exhibit binders.
14 They are original documents. Those waste management
15 manifests -- you will notice, they are multiple copies.
16 So you have a white copy on top followed by three
17 carbons -- green, pink and yellow. Green, pink and
18 yellow.

19 Agents on the site did confiscate two of
20 those copies. Julius DeSimone had a third. Dominick
21 Mazza was maintaining the fourth and he didn't produce
22 it. It also bears mentioning that he did produce
23 manifest 1104; 1104 corresponded to the shipment that
24 tested negative for asbestos. Another coincidence. Look
25 at that. Here's what we didn't get, folks. Now, they

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1 may try to argue, well, there was other documents, that
2 you could have compared this document to that document
3 and then look over here at this document and go through
4 all these binders like they tried to do with Investigator
5 Clarke but Investigator Clarke testified the documents
6 they may try to put in front of you don't show the same
7 information, folks. They secreted these documents for a
8 reason.

9 Those are the manifests that correspond
10 upon pile three and four, sample 14 and 15. There is the
11 samples, again, in the bags, and they correspond to
12 positive hits for asbestos. It's just that simple.
13 Moreover, you heard Ron Feehan, another New Jersey DEP
14 inspector, testify that he heard a Mazza & Sons, Inc.,
15 employee say something to the effect that Dominick Mazza
16 probably had the Frankfort files.

17 Now, he's got a file that he was keeping.
18 Why would he be keeping a file on his own, folks? Why
19 not just keep it in the business with everything else?
20 Think about that. But I would like to ask yourself this
21 question while you're thinking about that. Have you
22 noticed how every mistake, every misunderstanding, every
23 typo, every omission, it's always to their benefit. It's
24 always to Mazza & Son's benefit. He doesn't accidentally
25 produce stuff that's inculpatory, that incriminates him.

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1 It's only the stuff he doesn't produce. He doesn't
2 overproduce, he underproduces consistently.

3 That's what he wants you to believe, that
4 all this is just a misunderstanding, a mistake, an error,
5 an omission. That's a lot of coincidences, folks.
6 That's a lot of errors and omissions. All of which are
7 going to that man's favor.

8 Now, I've talked throughout the case about
9 -- addressed some of the anticipated defenses, folks,
10 throughout the presentation. Some of them, frankly, that
11 have been raised through trial just defy categorization
12 so let me try to address some of them now.

13 I believe on cross-examination of
14 Investigator Clarke counsel for Dominick Mazza said, Are
15 you aware that rejection only involved a couple pieces
16 of, like, a toilet seat. Well, among other things,
17 that's directly contradicted by the testimony of Fulton
18 Williams who said that the rejections dealt with hundreds
19 of pounds of asbestos that was hidden in loads that were
20 coming into Delaware Recycling from Mazza & Sons, Inc.
21 Moreover, folks, since when do we have fireproof toilet
22 seats? Why would a toilet seat be made out of asbestos
23 in the first place? It's ridiculous, folks.

24 There is also nearly half a day of
25 testimony about chains of custody. Nearly half a day

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1 went by on this and one of the points, I guess the only
2 point they really made is that the guy that carried the
3 -- didn't do the analysis was the guy that carried the
4 envelope from person A to person B didn't know how the
5 analyst actually reduced the sample to powder. He argued
6 with him, did you use a hammer? Did you -- that was the
7 extent of their cross-examination, folks. It's very
8 simple. Samples were taken in Delaware. They went
9 through several people, they were analyzed, they came
10 back positive for asbestos. That's all there is to it,
11 folks. It's that simple.

12 And, again, Fulton Williams testified that
13 in his estimation, with all the training he had, it was
14 friable asbestos that they were seeing in these Mazza
15 loads. This is -- this is a defense that's been made by
16 Cross Nicastro. I haven't talked about him for a few
17 minutes because he's only charged in count one but he has
18 asserted a defense that he believed somebody else was
19 getting the permit for this filling or this dumping.
20 It's his property. He needs the permit. He needs to
21 make the application. He needs to go to those agencies
22 and get that. You can't rely on somebody else. That's
23 the equivalent of me going and getting permits for
24 wetland filling or dumping on all your property and then
25 I can just trespass and dump all over your property.

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1 That's not how the system works, folks.

2 The site wasn't secured -- that's been an
3 argument made by Dominick Mazza -- between October and
4 November when the site was closed to when it was
5 sampling. The site wasn't secured. It's an open
6 landfill, folks. It's not really a way to secure the
7 site. They did block the ingress and egress. They did
8 routine patrols. Corey Schoonover, who did the patrols,
9 said the sites -- it didn't change. Likewise, what's the
10 real insinuation here, that somebody drove into the site
11 with a bag of pulverized transite siding and didn't just
12 dump it on the ground in one spot but took the time to
13 sprinkle it through piles three and four. It's not a
14 valid argument. It's ridiculous.

15 Likewise, there is extensive
16 cross-examination by Special Agent Derx -- of Special
17 Agent Derx were, are a lot of times -- well, I won't
18 comment on that, but regardless, they made a couple
19 arguments. One, that he didn't sample the whole pile.
20 That he didn't collect all the evidence. He's supposed
21 to take 80,000 pounds out of these two piles and take
22 them back to his evidence locker at CID? Is that what
23 they want him to do? Likewise, they argue with him
24 because they didn't piece together all the pieces of
25 transite and rebuild the house. I guess that's what they

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1 were arguing.

2 Well, folks, he took a representative
3 sample of materials he was seeing littered throughout the
4 pile, that's what he did. He followed NEIC procedures,
5 EPA procedures and his training and experience. That's
6 what he did.

7 And, lastly, there's been some argument --
8 why were the Mazza defendants charged? There were other
9 people that dumped to the site. Well, they are ignoring
10 the fact that there's a conspiracy. We named some of the
11 individuals who were involved in the conspiracy. Some of
12 those individuals have died, some of them have been
13 unindicted, some have been indicted. Some have -- some
14 are not in this room, there's no doubt about that, but
15 the judge will instruct you, you're not to be considering
16 who else was involved in rendering your decision and
17 verdict as to these other people except to the extent to
18 establish a conspiracy.

19 Likewise, folks, the decision of who to
20 charge rests with the United States. Not the Mazza
21 defendants. The judge will instruct you that's not
22 something you should be considering. I'll tell you,
23 though, why the Mazza defendants were charged. No other
24 defendant was caught dumping red-handed on the site other
25 than Eagle Recycling and Mazza & Sons, Inc. Caught

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1 dumping asbestos-contaminated materials. No other
2 defendant hid documents, falsified reports and made false
3 statements to law enforcement. That's why Dominick Mazza
4 and his company are on trial. Don't lose sight of that.

5 Folks, what I am begging you to do,
6 please, please, please consider the evidence in this
7 case, not the excuses. Consider the evidence that's in
8 front of you and the judge will instruct you extensively
9 on that. Consider the arguments -- not the arguments,
10 not the insinuation. Consider the evidence and it is
11 substantial in this case, ladies and gentlemen. There is
12 a tremendous amount of evidence here, folks.

13 Now, the defendants are all going to give
14 closings as well and I will have a chance to talk to you
15 at the end and, again, I'm going to ask you while you're
16 considering all their arguments, ask yourself, are they
17 arguing evidence or are they arguing excuse? Please do
18 that. The evidence, in addition, leads to but one
19 conclusion here, folks. Guilt beyond a reasonable doubt.
20 That's the verdict we are asking of you folks as against
21 all these defendants on all these charges.

22 The facts establish it, the law supports
23 it and justice demands it. We thank you for the time you
24 put into this case and for your service. Thank you.

25

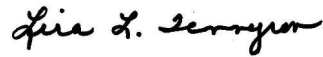
Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

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C E R T I F I C A T I O N

I, Lisa L. Tennyson, RMR, CSR, CRR, Official
Court Reporter in and for the United States District
Court, Northern District of New York, hereby certify that
the foregoing 42 pages of testimony taken by me to be an
true excerpted computer-aided transcript to the best of
my ability.



Lisa L. Tennyson, R.M.R., C.S.R., C.R.R.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY